

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CIVIL NO. \_\_\_\_\_

DJ Coleman Inc., )

Plaintiff, )

vs. )

SUMMONS

Nufarm Americas Inc. )

Defendant. )

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THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANT

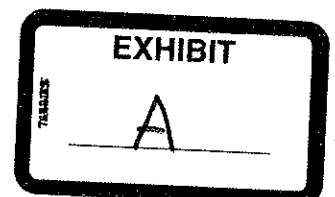
YOU ARE HEREBY SUMMONED and required to appear and defend against the Complaint in this action, which is herewith served upon you, by serving upon the undersigned an Answer or other proper response within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 17<sup>th</sup> day of April, 2008.

SMITH BAKKE PORSBORG & SCHWEIGERT

By   
\_\_\_\_\_  
Scott K. Porsborg  
116 North 2<sup>nd</sup> Street  
P.O. Box 460  
Bismarck, ND 58502-0460  
(701) 258-0630  
ND State Bar ID No. 04904

Attorneys for Plaintiff,  
DJ Coleman Inc.





GENERAL ALLEGATIONS

III.

Plaintiff owns and operates a farm in which it planted sunflowers in 2007.

IV.

Plaintiff appropriately applied the herbicide Assert to the sunflower crop. Defendant manufactured the Assert that plaintiff applied to the sunflower crop.

V.

The Assert caused damage to the sunflowers, resulting in a total loss of the sunflower crop. The damage to the sunflowers was caused by defects in the Assert, defendant's negligence, failure to warn, breach of warranties, statutory violations, and/or other fault of defendant.

PRODUCTS LIABILITY

VI.

Defendant manufactured and placed Assert into the stream of commerce in North Dakota.

VII.

Among other defects, the Assert was defectively designed, defectively manufactured, defectively tested, and otherwise defective when used in accordance with defendant's instructions and/or reasonable use.

VIII.

As a result of the defects, plaintiff's sunflower crop was damaged, subjecting defendant to liability, including strict liability.

NEGLIGENCE

IX.

Defendant had duties, among other duties, to supply a non-defective herbicide, to properly test the herbicide, to provide a herbicide that would perform satisfactorily, would not damage crops when used in accordance with instructions and/or reasonable use, and would be safe to use on plaintiff's sunflowers. Defendant breached its duties, which proximately caused damage to plaintiff's sunflower crop.

FAILURE TO WARN

X.

Defendant had a duty to warn plaintiff regarding, among other things, proper use and application of Assert and risks of property damage from use of Assert. Defendant failed to warn plaintiff, resulting in damage to plaintiff's sunflower crop.

XI.

Defendant's failure to warn constitutes a breach of state statutory and/or common law, to the extent consistent with federal law, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

BREACH OF WARRANTIES

XII.

Defendant expressly warranted that, among other things, the Assert would be effective, would perform satisfactorily, would not damage crops when used in accordance with instructions and/or reasonable use, and would be safe to use on plaintiff's sunflowers. Defendant breached express warranties, resulting in damage to plaintiff's sunflower crops.

XIII.

Among other implied warranties, defendant impliedly warranted that the Assert was fit for the purpose of controlling weeds in relation to sunflower crops, that the Assert was merchantable, that the Assert would perform satisfactorily, would not damage crops when used in accordance with instructions and/or reasonable use, and would be safe to use on plaintiff's sunflowers. Defendant breached implied warranties, resulting in damage to plaintiff's sunflower crops.

XIV.

In addition to express and implied warranties from defendant directly to plaintiff, plaintiff could reasonably be expected to use the Assert and plaintiff was a third-party beneficiary to any express or implied warranty defendant gave to distributors, retailers, resellers, and others. Defendant breached express and implied warranties to distributors, retailers, resellers, and others, resulting in damage to plaintiff's sunflower crops.

STATUTORY VIOLATIONS

XV.

Defendant, with intent to sell Assert, made advertisements that contained assertions, representations, or statements of fact which were untrue, deceptive, or misleading regarding, among other things, Assert's effectiveness, performance, proper use, and safety to plaintiff's sunflowers. Defendant's assertions, representations, statements of fact, and/or other conduct constitute a violation of North Dakota Century Code Chapter 35-12 and other applicable law.

XVI.

Defendant used deceptive acts or practices, fraud, false pretenses, false promises, and misrepresentations regarding, among other things, Assert's effectiveness, performance, proper use, and safety to plaintiff's sunflowers. Defendant acted with the intent that plaintiff and others rely on defendant's advertising. Defendant's conduct constitutes unlawful sales or advertising practices pursuant to North Dakota Century Code Chapter 51-15, entitling plaintiff to treble damages, costs, disbursements, and actual reasonable attorney's fees incurred in this action.

WHEREFORE, plaintiff prays for judgment against the defendants as follows:

1. For economic and non-economic damages in an amount not less than \$50,000;


2. For his costs, disbursements and attorney's fees as allowed by law; and

3. For such other and further relief as the Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS A JURY OF SIX PERSONS.

Dated this 17<sup>th</sup> day of April, 2008.

SMITH BAKKE PORSBORG & SCHWEIGERT

By   
Scott K. Porsborg  
116 North 2<sup>nd</sup> Street  
P.O. Box 460  
Bismarck, ND 58502-0460  
(701) 258-0630  
ND State Bar ID No. 04904

Attorneys for Plaintiff,  
DJ Coleman Inc.

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

04/18/2008

CT Log Number 513332056



**TO:** Ken Mikes  
NUFARM USA, INC.  
150 Harvester Drive, Suite 200  
Burr Ridge, IL 60527

**RE: Process Served in North Dakota**

**FOR:** NuFarm Americas, Inc. (Domestic State: IL)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

<b>TITLE OF ACTION:</b>	DJ Coleman Inc., Pltf. vs. Nufarm Americas Inc., Dft.
<b>DOCUMENT(S) SERVED:</b>	Letter, Summons, Complaint and Jury Demand, Pltf's Interrogatories and Request for Production of Documents to Dft.
<b>COURT/AGENCY:</b>	District Court, County of Burleigh, ND Case # None Specified
<b>NATURE OF ACTION:</b>	Product Liability Litigation - Breach of Warranty - Dft. allegedly breached warranty on the safe use of herbicide Assert resulting in damage to Pltf's sunflower crop.
<b>ON WHOM PROCESS WAS SERVED:</b>	C T Corporation System, Bismarck, ND
<b>DATE AND HOUR OF SERVICE:</b>	By Certified Mail on 04/18/2008 postmarked on 04/17/2008
<b>APPEARANCE OR ANSWER DUE:</b>	Within 20 days.
<b>ATTORNEY(S) / SENDER(S):</b>	Scott K. Porsborg Smith, Bakke, Porsborg & Schweigert 116 N 2nd St. P.O. Box 460 Bismarck, ND 58502-0460 701-258-0630
<b>ACTION ITEMS:</b>	SOP Papers with Transmittal, via Fed Ex 2 Day , 790988046540
<b>SIGNED:</b>	C T Corporation System
<b>ADDRESS:</b>	314 East Thayer Avenue Bismarck, ND 58501
<b>TELEPHONE:</b>	701-223-2890

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Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.





April 17, 2008

116 North 2nd Street  
Bismarck, ND 58501

VIA CERTIFIED MAIL  
NO. 7007 0710 0001 4210 1407  
RETURN RECEIPT REQUESTED

P.O. Box 460  
Bismarck, ND 58502-0460  
Phone (701) 258-0630  
Fax (701) 258-6498

C T Corporation System  
P.O. Box 400  
Bismarck, ND 58502-0400

In re: DJ Coleman v. Nufarm Americas

Dear Sir/Madam:

Enclosed and served upon you as the registered agent for defendant Nufarm Americas Inc., please find a copy of the following documents with regard to the above-entitled action:

1. Summons;
2. Complaint and Jury Demand; and
3. Plaintiff's Interrogatories and Request for Production of Documents.

Please be advised that you have twenty (20) days from the date of service to answer the complaint in this matter.

Sheldon A. Smith\*  
Randall J. Bakke\*\*\*  
Scott K. Porsborg\*\*  
Suzanne M. Schweigert\*  
Shawn A. Grinolds\*\*  
Mitchell D. Armstrong\*\*  
David R. Phillips\*

Respectfully,



SCOTT K. PORSBORG

E-Mail: sporsborg@smithbakke.com

slf  
enclosures  
cc: DJ Coleman(w/ enc.)

\* Licensed in North Dakota

■ Licensed in Minnesota

• Licensed in South Dakota

\* Board Certified Civil Trial  
Specialist by National Board  
of Trial Advocacy

Corporation Service Company.1